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Before the

UNITED STATES DEPARTMENT OF JUSTICE

ANTITRUST DIVISION

### Joint Request

2. Class has pending before the United States Court of Appeals for the District of Columbia Circuit an appeal (No. 92-1269) of Shareholders of GAF Corporation, 7 FCC Rcd 3225 (1992), in which the Commission denied various petitions and objections filed by Class and others against GAF and Station WNCN(FM). Class also has pending before the Commission objections to certain equal employment opportunity ("EEO") practices of WNCN(FM).

3. The Joint Request is accompanied by an Agreement which contemplates dismissal of the Class appeal and challenge to GAF's employment practices in consideration for which GAF proposes to pay Class the sum of \$40,000. The parties state that this amount is less than the legitimate and prudent expenses incurred by

will receive in consideration for the dismissal of its appeal and EEO objections does not exceed its legitimate and prudent expenses. The settlement agreement satisfies the literal requirements of § 73.3588 and, accordingly, may be approved.<sup>1</sup>

justify a waiver in this instance.

7. Specifically, Class submits that the basis upon which it filed its competing application -- the criminal convictions of GAF's parent company and one of its former officers -- no longer exists because the convictions were overturned. Class also maintains that the \$40,000 reimbursement amount is relatively small and, in any event, is less than Class' actual expenses. Finally, the applicants maintain that a waiver would permit a universal settlement of this proceeding, thus furthering long-standing Commission policy of encouraging settlements in adjudicatory proceedings.

8. The Bureau opposes the settlement because it is entirely self-serving, does not advance the public interest, and makes a complete mockery of the Commission's policy proscribing the reimbursement of expenses in comparative renewal proceedings. Furthermore, the reasons which GAF and Class advance as justification for a waiver of Section 73.3523 are baseless.

9. The Joint Motion suggests that Class only recently learned about the reversal of the GAF convictions or only recently concluded that such changed circumstances have undermined the basis on which the Class application was predicated. This is ridiculous. The convictions were overturned on appeal on March 18, 1991, before Class filed its application.

Furthermore, rehearing was denied on June 3, 1991, and, following the Justice Department's decision not to seek a further trial, an order was signed on August 9, 1991, dismissing the indictment and terminating the criminal proceeding. See Shareholders of GAF Corporation, 7 FCC Rcd 3225, 3230 (1992). These latter events occurred before the Hearing Designation Order, 8 FCC Rcd 1742 (MMB 1993), in this proceeding was released, and before Class voluntarily submitted its Notice of Appearance, filed April 1, 1993, wherein it represented to the Commission, presumably in good faith, that it intended to appear at hearing and present evidence.

10. The settlement agreement is nothing more than a transparent attempt on the part of Class to extract some cash compensation in a case which it all but acknowledges it cannot win. It belies logic how Commission approval of such an arrangement could possibly serve the public interest. Indeed, if Class' reason for filing its application was not dubious, its reason for continuing to prosecute its application up to the present is.

11. While the Bureau agrees in principle that settlement agreements can be beneficial, this settlement agreement is decidedly different. If Class wants to dismiss its application, it may do so with prejudice at any time. But the Bureau cannot and certainly will not support the payment of any money to Class



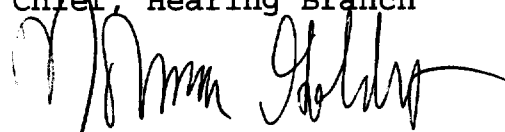
Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977).

14. In the instant case, GAF and Class have not even referenced the foregoing requirements for a stay, much less attempted to satisfy them. Accordingly, there is no justification whatsoever for granting a stay, and the parties' request should be denied.

Respectfully submitted,  
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CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch,

Mass Media Division, certify that I have on this 6th day of July